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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ARSENIO RUSSHON MORGAN,

Defendant and Appellant.

A110812

(Solano County Super.
Ct. No. FCR211524)

Defendant Arsenio Russhon Morgan appeals the judgment entered upon a jury verdict finding him guilty of kidnapping in the commission of a carjacking. (Pen. Code,¹ § 209.5, subd. (a).) His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

Defendant was charged in count I with kidnapping for carjacking (§ 209.5, subd. (a)) and in count II with second degree robbery (§ 211). He moved for substituted counsel under *People v. Marsden* (1970) 2 Cal.3d 118, and the trial court denied the motion.

The evidence at trial showed that on the evening of September 16, 2003, defendant and another man, Johnny Jones, approached Angela White as she went to her car in a parking lot at Solano Community College. As she put her key in the door lock, one of the men came up and put his arm around her neck, choking her nearly to the point of

¹ All statutory references are to the Penal Code.

unconsciousness. The other man grabbed her keys, and the two pushed her into the back seat of the car. One of them sat on her. Her face was “smashed” up against the car door, and her jacket covered her face. The man in the back seat told her to be quiet and stay still, and the other started the car and drove it onto Interstate 80. The men asked White whether she had any children, whether she was married, and whether she had any money. They told her she would be lucky if she saw her children again. The man in the back seat went through her purse and her pockets. He also fondled her breasts, crotch area, and buttocks as he sat on her. Eventually the driver stopped the car; and the two men opened the car door, pushed White out, and drove away. Two passersby took White to a Richmond police station. She was disheveled, bleeding from her nose, and crying.

A police officer found White’s car parked on a street in Richmond the following day. DNA material found on the front passenger door of the car matched that of defendant.²

Jones testified on defendant’s behalf. He admitted he and defendant had kidnapped White, but denied that the pair had made any threats or asked White about money or her family. He said they had consumed alcohol, marijuana, and methamphetamine during the day. The pair had taken the car because they needed a ride home after the person who had been driving them was arrested, apparently for driving under the influence.

A psychologist testified on defendant’s behalf that someone who had consumed the amount of alcohol and drugs that defendant apparently had would have impaired function and decisionmaking and would be “reactive,” rather than premeditating his actions.

² Investigators also recovered from the car DNA material matching that of Jones, who at the time of defendant’s trial was serving a prison sentence for his part in the incident. Nella Iosua, the aunt of defendant and the mother of Jones, testified at trial that defendant told her he had been with Jones the day of the carjacking. She had told a detective from the sheriff’s office that defendant had told her he and Jones saw a woman at the college, that defendant grabbed the woman and put her in the back, and that Jones grabbed the keys and drove the car. However, at trial, Iosua testified that it was, in fact, Jones who provided the details about the carjacking.

The jury found defendant guilty of kidnapping for carjacking (§ 209.5, subd. (a)), and not guilty of second degree robbery or the lesser offense of grand theft (§§ 211, 487). Defendant moved for a new trial, contending the district attorney had not disclosed the evidence that defendant had touched White in a sexual manner; in opposition, the prosecutor submitted a declaration from a deputy district attorney stating he had disclosed the evidence to defense counsel. The trial court denied the motion, concluding defendant had not been prejudiced, and sentenced defendant to imprisonment for life with the possibility of parole. (§ 209.5, subd. (a).)

Defendant was represented by counsel throughout the proceedings. The evidence supports the jury verdict. We see no error in the trial court's rulings or in the sentence. There are no meritorious issues to be argued.

DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

RUVOLO, P.J.

REARDON, J.